IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6688 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

DANIBEN DHULABHAI ROHIT WIDOW & 1 - Petitioner(s)

Versus

THE COLLECTOR,KAIRA & 4 - Respondent(s)

==========

Appearance :

MR AJ PATEL for Petitioner(s) : 1, 1.2.1, 1.2.2,1.2.3 - 2.

MR M R MENGDE AGP for Respondent(s) : 1,

MR PJ VYAS for Respondent(s) : 2 - 5.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Secretary,Revenue Department (Appeals), State of Gujarat dtd.18/8/1986 in Revision Application No.SRD-719 of 1984 in dismissing the same and confirming the order passed by the Collector, Kheda dtd.9/4/1984 in Appeal No.L&D-57 of 1983, in quashing and setting aside the order passed by the Collector, Kheda dtd.21/2/1983 in transferring the land in question to the Dy.Collector from Gauchar Land.

2. The dispute is with regard to the land bearing Survey No.303, admeasuring 9 Acres and 37 Gunthas of Village Moraj, Taluka Khambhat, District Kheda (hereinafter referred to as “the land in question). That the said was a Gauchar

Land and a Resolution No.22 dtd.17/12/1969 came to be passed by the Gram Panchayat Moraj to allot the land in question to the land less persons belonging to Scheduled Caste. That thereafter,the Collector, Kheda passed order dtd.21/2/1983 in transferring the said Gauchar land to the Dy.Collector, Petlad for the allotment of the the landless persons belonging to Scheduled Caste. It appears that thereafter, the Dy.Collector passed order dtd.5/3/1983 allotting the land in question to the petitioner and the said order came to be challenged by the respondent nos.2 to 5 before the Collector, Kheda by filing Appeal No.57 of 1983 an the Collector, vide judgement and order dtd. 9/4/1984 partly allowed the said appeal, quashing and setting aside the order passed by the Dy.Collector dtd.5/3/1983 as well as modified the order dtd.14/3/1983 and directed the Dy.Collector to dispose f the land in question afresh after appointing Land Committee. Being aggrieved and dissatisfied with the order passed

by the Collector, Kheda dtd.9/4/1983, the petitioners preferred revision application No.SRD-719 of 1984 before the Secretary (Appeals), Revenue Department, state of Gujarat and the Secretary vide his judgement and order dtd.18/8/1986 not only dismissed the said revision application, confirming the order passed by the Collector, Kheda dtd.8/4/1984 in Appeal No.L&D-57 of 1983, but quashed and set aside the order passed by the Collector, Kheda dtd.21/2/1983, by which the land in question was transferred from Gauchar land to the Dy.Collector, Petlad. Being aggrieved and dissatisfied with the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dtd.18/8/1986 in passing the Revision Application No.SRD-719 of 1984, the petitioners have prefrred the present petition under Articles 226 and 227 of the Constitution of India.

3. Mr.Shital Patel, learned advocate

appearing on behalf of the petitioner has vehemently submitted that the Secretary (Appeals) has materially erred in quashing and setting aside the order passed by the Collector, Kheda dtd.21/2/1983, by which the land was transferred / vested in favour of the Dy.Collector, Petlad for the allotment of the land in question to the landless persons belonging to the Scheduled Caste community and thus, the Secretary (appeals) has passed the order beyond the scope of revision, as what was challenged before the Secretary (Appeals) was the judgment and order passed by the Collector, Kheda in quashing and setting aside the allotment in favour of the petitioners and remanding the matter to the Deputy Collector for disposal of the land afresh, after appointing Land Committee. At the most, the Secretary could have confirmed the said order but he could not have set aside the order passed by the Collector dtd.22/1/1983 which was never challenged before him. Mr.Shital

Patel, learned advocate for the petitioner has also further submitted that till appropriate decision is taken by the Dy.Collector, Petlad on remand as per the order passed by the Collector, Kheda dtd.9/4/1984 in Appeal No.L&D-57 of 1983, the petitioner be allowed to be continued subject to the order that may be passed by the Dy.Collector, Petlad on remand and that the petitioner will abide by the allotment that may be made by the Land Committee and will not claim any equity and if ultimately the land is not allotted to the petitioners, the petitioners will vacate the land in question voluntarily and without any delay.

4. Mr.Mengde, learned AGP for State is not in a position to support that part of the order passed by the Secretary (Appeals) in quashing and setting aside the order passed by the Collector, Kheda dtd.21/2/1983, by which the land in question was transferred from the head of Gauchar

to Deputy Collector, Petlad for the allotment of the land in question to the persons belonging to the Scheduled Caste community.

5. Mr.P.J. Vyas, learned advocate appearing on behalf of the respondent Nos.2 to 5 has submitted that the Secretary (Appeals) is justified in confirming the order passed by the Collector, Kheda, by which the order passed by the Deputy Collector, Petlad allotting the land in question to the petitioner is set aside.

6. Heard the learned advocate appearing on behalf of the parties and considered the material on record. In the facts and circumstances of the case, it is required to be noted that the petitioners challenged the judgement and order passed by the Collector, Kheda dtd.9/4/1984 in Apeal No.L&D-57 of 1983, in quashing and setting aside the order passed by the Dy.Collector dtd.5/3/1983 and modified the order dtd.14/3/1983

in granting the land in favour of the petitioners and the order passed by the Collector dtd.21/1/1983 in transferring the land in question from the head of Gauchar to the Dy.Collector,Petlad for the allotment of the land in question to the landless persons belonging to the Scheduled Caste, was never challenged before the Secretary (Appeals) and therefore, the Secretary (Appeals is not justified in quashing and setting aside the order passed by the Collector, Kheda dtd.21/2/1983. So far as confirming the order passed by the Collector, Kheda dtd.9/4/1984 in Appeal No.L&D-57 of 1983 is concerned, there is no illegality committed by the Secretary and/or the Collector,Kheda in quashing and setting aside the order passed by the Dy.Colector dtd.5/3/1983 and 14/3/1983, by which the Dy.Collector, Petlad passed order for the allotment of the land in question to the petitioner and remanding the matter to the Dy.Collector, for disposing the land in question

afresh, after appointing Land Committee.

7. For the reasons stated as aforesaid, the petition succeeds in part. The judgement and order passed by the Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No.SRD-719 of 1984 dtd.18/8/1986 is modified to the aforesaid extent. The order passed by the Secretary (Appeals) in quashing and setting aside the order passed by the Collector, Kheda dtd.21/2/1983 is hereby quashed and set aside. The rest of the order passed by the Secretary (Appeals) confirming the judgment and order passed by the Collector, Kheda dtd.9/4/1984 in Appeal No.L&D-57 of 83 in quashing and setting aside the order passed by the Dy.Collector dtd.5/3/1983 and modified order dtd.14/3/1983 by which the Dy.Collector granted / allotted the land in favour of the petitioners, is hereby confirmed.

8. The Dy.Collector, Petlad is hereby directed to complete the proceedings for the allotment of the land in question in accordance with law and on merits, as directed by the Collector, Kheda while passing order dtd.9/4/1984 in Appeal No.L&D-57 of 1983, after inviting applications from the other eligible persons also and after appointing Land Committee, as expeditiously as possible, preferably within a period of FOUR MONTHS from the date of receipt of writ of this order and until then if the petitioners are in possession of the land in question, they will be permitted to be in possession of the land in question, subject to the final order of allotment of the land in question that may be passed by the Dy.Collector, Petlad on remand and if ultimately the land in question is not allotted to the petitioners and the same is allotted to some other eligible persons, in that case, the petitioner shall vacate and hand over the vacant and peaceful

possession of the land in question immediately and without any delay. That allowing the petitioner to be in possession of the land in question as aforesaid, will not create any right or claim any equity, as the petitioners are allowed to be in possession till a fresh order is passed as aforesaid. The petitioners are directed to comply with the aforesaid directions strictly and the statement made by Mr.Shital Patel, learned advocate appearing on behalf of the petitioners as stated hereinabove, is also to be complied with.

9. Rule is made absolute to the aforesaid extent only. However,there will be no order as to costs.

(M.R. SHAH,J.)

rafik